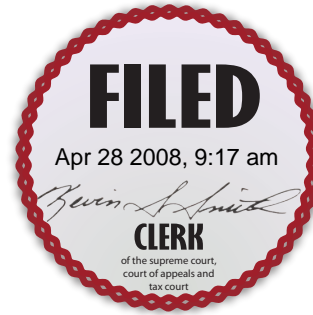


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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RAYNARD SHANK,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 49A02-0711-CR-932

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Curtis Foulks, Commissioner  
Cause No. 49G17-0706-FD-116901

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**April 28, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Raynard Shank appeals his convictions for Class D felony domestic battery, Class D felony intimidation, and Class A misdemeanor interference with reporting a crime. We affirm.

## **Issues**

Shank raises two issues on appeal, which we consolidate as whether there was sufficient evidence to support his convictions.

## **Facts**

The evidence most favorable to the convictions is that Shank and his girlfriend, B.R., have two children together. On June 7, 2007, Shank and B.R. argued on the phone about the children. Shank was supposed to watch the children that afternoon while B.R., her sister, and a friend went shopping. They were to meet at a McDonald's near Shank's place of work. Shank called B.R. and told her to take the children to his house instead, because his car was not equipped with children's car seats.

The group arrived at Shank's house that afternoon. Shank approached B.R. as she got out of the car. He yelled at her, called her names, and threatened her. In response to his threats, B.R. told Shank that "if he kept on threatening me that he would have to take it up with the court to see his kids." Tr. p. 57. Shank then punched B.R. in the face three or four times. B.R. told Shank he was going to jail, and she reached inside the car for her cell phone. He told B.R. that if he went back to jail he would kill her when he got out. B.R. attempted to dial 911, but Shank grabbed the phone and threw it. He began to hit B.R. in the face again and she fought back. B.R. got back in the car and drove away.

The women eventually flagged down a nearby police officer. After talking with police, B.R. went to the hospital.

On June 22, 2007, the State charged Shank with Class D felony domestic battery, Class D felony battery, Class D felony intimidation, Class A misdemeanor domestic battery, Class A misdemeanor battery, and Class A misdemeanor interference with reporting a crime. On August 30, 2007, the trial court held a bench trial. The trial court found Shank guilty on all counts, but found for purposes of sentencing that the misdemeanor counts were moot and the Class D felony battery merged with the Class D felony domestic battery. The trial court sentenced Shank to two years executed and one year on probation. This appeal followed.

### **Analysis**

Our standard of review for sufficiency of the evidence claims is well settled. When reviewing the sufficiency of the evidence supporting a conviction, we will not reweigh the evidence or judge the credibility of witnesses. Staton v. State, 853 N.E.2d 470, 474 (Ind. 2006). We must look to the evidence most favorable to the conviction together with all reasonable inferences to be drawn from that evidence. Id. We will affirm a conviction if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

Shank first contends that because three of the State's witnesses testified the incident happened before two o'clock in the afternoon and a defense witness testified Shank did not leave work until two, that the trial court improperly considered the

testimony of the State's witnesses. Shank also contends that insufficient evidence exists to prove that B.R. was actually dialing 911 or that he had the knowledge and intent to interfere with her attempt to do so.

Shank's contention regarding the timeline is merely a request for us to reweigh evidence and judge the credibility of witnesses. B.R. and her sister testified the incident happened around 1:30, while their friend testified that it could have been 12:00, 12:30, or 1:00. Marilyn Brown, Shank's supervisor, testified that he typically left work between 2:00 and 3:00 and that he clocked out on June 7, 2007 at 1:59. Shank contends that Brown's testimony impeaches the State's three witnesses. We disagree. The women's memory of the time they witnessed this event is not as relevant as the substance of what they witnessed. The victim and both witnesses corroborated that Shank accosted B.R., punched her multiple times, and took her cell phone away. B.R. testified that Shank threatened her. This testimony supports the convictions of battery, intimidation, and inference with reporting of a crime. Shank is requesting that we assume the timeline issue creates doubts as to the witnesses' credibility, but it is not our function to judge witness credibility.

Shank's contention regarding the validity of his interference with reporting a crime conviction is also without merit. Interference with reporting a crime is statutorily defined as:

A person who, with the intent to commit, conceal, or aid in the commission of a crime, knowingly or intentionally interferes with or prevents an individual from:

- 1) using a 911 emergency telephone system;

- 2) obtaining medical assistance; or
- 3) making a report to a law enforcement officer;

commits interference with the reporting of a crime, a Class A misdemeanor.

Ind. Code § 35-45-2-5. The testimony here clearly indicated that B.R. told Shank she was calling police, she reached for her phone, and he took her phone away. B.R. testified that she had dialed 911 when Shank took her phone and threw it. B.R.'s sister was in the car and testified that Shank grabbed the phone out of B.R.'s hand before she dialed. The other witness in the car, B.R.'s sister's friend, testified that she thought B.R. dialed the phone, and she heard B.R. tell Shank that "you're going to jail." Tr. p. 45.

Despite the inconsistencies in this testimony regarding actual dialing, all three witnesses were clear that Shank grabbed B.R.'s cell phone from her hand and threw it. Before Shank did this he told B.R. that "if he went back to jail for doing this again that he was going to kill me when he got out." Tr. p. 59. This threat indicates that Shank knew or at least assumed B.R. was contacting police, and took action to prevent her from doing so. Shank also argues that his action did not amount to total interference because the other passengers in the car had cell phones. We disagree and cannot logically reason that Shank would have had to prevent every individual on the scene from using her phone in order to be convicted. We conclude that Shank's interactions with B.R. sufficiently support his conviction for interference with reporting a crime.

### **Conclusion**

Sufficient evidence exists to support Shank's convictions for Class D felony domestic battery, Class D felony intimidation, and Class A misdemeanor interference with reporting a crime. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.